

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)

TELEGLOBE AMERICA INC.)

DOCKET NO. 04-0013

For Authority to Implement)
Internal Corporate Change.)
_____)

DECISION AND ORDER NO. 20844

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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At 8:00 o'clock A.M.

Karen Higdon

Chief Clerk of the Commission

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DECISION AND ORDER

I.

Introduction

TELEGLOBE AMERICA INC. ("TAI"), by a petition filed on January 20, 2004, requests commission approval for a series of structural and financing transactions through which certain new intermediate holding companies will be placed between TAI and TAI's current indirect parent, Teleglobe International Holding, Ltd. ("Old Teleglobe International").

TAI served copies of the petition on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate, through its position statement filed on February 18, 2004, indicates that it does not object to the approval of the proposed structural and financing transactions, described above, subject to one condition, discussed below.

II.

Background

A.

Overview of Subject Entities

TAI (fka, TLGB Corporation)¹, a Delaware corporation located in Reston, Virginia, is an indirect, wholly-owned subsidiary of Old Teleglobe International, a Bermuda corporation.² It is authorized to provide intrastate telecommunications services in the State of Hawaii as a reseller.³

Presently, TAI is a wholly-owned subsidiary of TLGB Netherlands Holdings B.V. ("Teleglobe Netherlands"), a Dutch company, that is, in turn, wholly-owned by TLGB Luxembourg Holdings S.a.r.l. ("Teleglobe Luxembourg"), a company formed under the laws of Luxembourg. Teleglobe Luxembourg is currently a wholly-owned subsidiary of Old Teleglobe International. See Exhibit "1" attached hereto.

B.

Description of Transactions

For various corporate, organizational, and financial reasons, the corporate parents of TAI (collectively, referred to as "Teleglobe companies") propose to complete a series of transactions

¹On May 30, 2003, TLGB Corporation ("TLGB") changed its name to TAI.

²See Decision and Order No. 03-0200, filed on April 8, 2003, in Docket No. 03-0200.

³Decision and Order No. 20729, filed on January 5, 2004, in Docket No. 03-0239.

whereby the holding company structure of the Teleglobe companies will be modified to add two new intermediate holding companies between TAI and its ultimate owners ("proposed structural transactions"). See Exhibit "1" attached hereto. The proposed structural transactions include the following steps:

Step 1: Old Teleglobe International will contribute all of its stock in Teleglobe Luxembourg to a newly formed direct wholly-owned subsidiary, Teleglobe International Holding Ltd. ("New Teleglobe International") which will then merge with ITXC Corp. ("ITXC"), an existing holding company formed under the laws of Delaware. Effective upon the merger, New Teleglobe International will be registered and publicly traded. In preparation of the proposed structural transactions, Old Teleglobe International will also change its name to Teleglobe Bermuda Holdings Ltd. As a result, New Teleglobe International will become a new intermediate indirect holding company between Old Teleglobe International and Teleglobe Luxembourg, and therefore a new indirect intermediate holding company of TAI.

Step 2: New Teleglobe International will acquire all of the outstanding shares of ITXC pursuant to a stock for stock merger whereby a merger subsidiary of New Teleglobe International will merge with and into ITXC. In exchange for each share of ITXC common stock, the current stockholders of ITXC will have the right to receive in the aggregate approximately twenty-eight (28) per cent of New Teleglobe International.

Step 3: Teleglobe Netherlands, the current direct parent of TAI, will contribute its ownership of TAI to ITXC. As a result, ITXC will become the direct corporate holding company of TAI and an indirect wholly-owned subsidiary of New Teleglobe International.

In addition, the Teleglobe companies will also complete various financing arrangements necessary to allow appropriate funding to be provided to TAI ("proposed financing transactions"). In particular, it is currently expected that New Teleglobe International will issue and/or incur up to \$215 million in debt securities and other debt financing arrangements. A portion of the proceeds will be loaned to TAI in order to repay existing intercompany notes. In connection with these proposed financing transactions, TAI may enter into certain debt financing arrangements and may act as a guarantor or provide a security interest in its assets.

TAI contends that the proposed structural and financing transactions, described above, will serve the public interest and will allow TAI to compete more effectively in the Hawaii marketplace. TAI represents that the consummation of these transactions will not affect the ultimate control of TAI, particularly because Old Teleglobe International will retain a direct majority interest in New Telglobe International. Furthermore, because all of these transactions will be completed at the holding company level, and substantively no change in control will result, TAI asserts that these transactions "will not affect the day-to-day operations of TAI and will be entirely transparent to the customers in terms of the services that they receive."

B.

Consumer Advocate's Position

As stated in its February 18, 2004 position statement, the Consumer Advocate "recognizes the entry of many long distance telecommunications service providers in the Hawaii market." The Consumer Advocate further asserts that "[t]he market place, it is assumed, will then serve to mitigate any traditional public utility regulatory concerns regarding the [proposed structural and financing transactions]." As such, the Consumer Advocate states that it does not object to commission approval of the proposed structural and financing transactions, described above, provided a copy of the proposed debt financing agreement(s) of the financing transactions is submitted to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order.

III.

Discussion

Hawaii Revised Statutes ("HRS") § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months. The statute limits the purpose for which stocks and other evidences of indebtedness may be issued to, among other things, the acquisition of property, building or construction, or improving the utility's capital facilities or services. HRS § 269-19 requires a public utility corporation to obtain our consent prior to, among

other things, mortgaging, encumbering, or otherwise disposing of its property.

Moreover, HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review proposed transactions of the parent entity of a regulated public utility under HRS § 269-7(a).

Because the proposed structural transactions concern transactions of only TAI's parent entities, such transactions fall under our purview under HRS § 269-7(a). Furthermore, because TAI may enter into certain long-term debt financing arrangements and may act as a guarantor or provide a security in its assets, such transactions would likely trigger both HRS §§ 269-17 and 269-19.

Nonetheless, HRS § 269-16.9 also permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, Hawaii Administrative Rules ("HAR") § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, particularly TAI's representations in this docket, we find the following:

- (1) Much of the telecommunications services currently provided by TAI is competitive;
- (2) TAI is a non-dominant carrier in Hawaii;
- (3) The proposed structural and financing transactions, described

in the petition, are consistent with the public interest; and (4) Competition, in this instance, will serve the same purpose as public interest regulation.⁴

Based on the foregoing, the commission, on its own motion, will waive the requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, with respect to the proposed structural and financing transactions described in the petition, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁵

Similarly, we also find it in the public interest to waive the applicability of HAR §§ 6-61-101 and 6-61-105 in this docket. Thus, for purposes of this petition, we will not require the information/documents normally required under HAR §§ 6-61-101 and 6-61-105. We also agree, nonetheless, with the Consumer Advocate that certain information should be provided to the commission and the Consumer Advocate subsequent to the issuance of this decision and order. Therefore, we will adopt the Consumer Advocate's recommended condition, and direct TAI to submit a copy of the proposed debt financing agreement(s) of the financing transactions, described above, to the commission and the

⁴We take administrative notice of all pertinent commission records relating to TAI.

⁵At the same time, the commission will continue to examine a utility's application on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a) or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application involving similar transactions or circumstances.

Consumer Advocate within thirty (30) days of the date of this decision and order.

IV.

Orders

THE COMMISSION ORDERS:


1. The requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, are waived with respect to the proposed structural and financing transactions described in the petition, subject to the condition that TAI submit a copy of the proposed debt financing agreement(s) of the financing transactions to the commission and the Consumer Advocate within thirty (30) days of the date of this decision and order.


2. To the extent that the petition does not contain all of the information required under either HAR § 6-61-101 or HAR § 6-61-105, the applicability of those sections is waived.

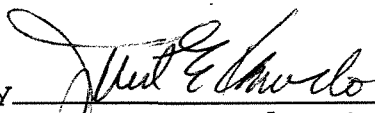
3. TAI shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii this 9th day of March, 2004.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

04-0013.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20844 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

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Karen Higashi

DATED: March 9, 2004